IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.19 OF 2002

IN

COMPANY PETITION NO.254 OF 2001

...

Dempo Mining Corporation Ltd. ...Appellant

v/s.

Jamnadas Morarjee Finance Pvt.Ltd..Respondent

...

Mr.M.P.S.Rao i/b Purnanand & Co. for the Appellant.

None for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. By this Appeal the Appellant challenges the order

passed by the learned single Judge in Company Petition No.254 of 2001. The present Appellant was the Petitioner in that Company Petition. The learned single Judge has refused to admit that petition.

2. The Company Petition was filed by the Petitioner seeking an order of winding up of the Respondent-company. The learned single Judge has found in the order that the claim of the Petitioner appears to be barred by the law of limitation.

3. The learned Counsel pointed out to us that the Petitioner was relying on the letter dated 4-1-1999, which according to the Petitioner amounts to acknowledgement of the debt and therefore, according to the learned Counsel the learned single Judge was not justified in saying that the claim appears to be barred by the law of limitation.

4. Now, if one reads the letter dated 4-1-1999 it becomes evident that there were several transactions between the group of companies of the Petitioner and the group of companies of the Respondent and the letter of acknowledgement is given considering the transaction inter-se between the group of companies

of the Petitioner and the group of the companies of the Respondent. Perusal of the particulars of claim at Exh.J shows that the Petitioner was claiming total amount of Rs.46 lakhs as principal and Rs.30 lakhs as principal in relation to bill discounting facility. Perusal of the letter dated 4-1-1999 shows that the amounts are not mentioned as per the bill discounting facility or check discounting facility. Various amounts are mentioned in the letter dated 4-1-1999. It is clear for connecting the amounts which are mentioned in that letter to the amounts which are claimed in the statutory notice, oral evidence will be necessary.

5. Thus, in our opinion, the least that can be said is that the letter dated 4-1-1999 does not contain a clean admission of liability by the Respondent. Now, that the Appellant has already filed a civil suit for recovery of the amount, which is admittedly pending. One more aspect, in our opinion, that is relevant is that admission of the petition for winding up of the company is in the discretion of the court. The learned single Judge in exercise of this discretion after he applying his mind to the material placed on record has come to the conclusion that it will not be

appropriate to admit the company petition. In our opinion, in the facts and circumstances of this case, it will not be appropriate to interfere with the order which was in the discretion of the learned single Judge. Appeal is, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.20 OF 2002

IN

COMPANY PETITION NO.255 OF 2001

...

Rio Investment Ltd. ...Appellant

v/s.

Jamnadas Morarjee Finance Pvt.Ltd..Respondent

...

Mr.M.P.S.Rao i/b Purnanand & Co. for the Appellant.

None for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

. The documents relied on in this Appeal are also

the documents relied on in the Appeal No.19 of 2002. The letter of acknowledgement relied on in this Appeal is also the letter of acknowledgement in Appeal No.19 of 2002. Therefore, in view of the observations made in our order passed today in Appeal No.19 of 2002, this Appeal is also disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)